

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KELLY HARRIS and SHAYLENE LEE,

VS.

MAYFLOWER TRANSIT, LLC, d/b/a  
MAYFLOWER CORPORATION,

NO. 07-CV-126-JLQ

**ORDER DENYING MOTION  
TO DISMISS, INTER ALIA**

**Before the Court** is Defendant's Motion to Dismiss or alternatively Motion to Strike Plaintiff's First Amended Complaint, heard without oral argument on August 2, 2007. Regina M. McCrea and Ronald Gordon Morrison represent Plaintiffs. John A. Anderson represents Defendants. Having reviewed the record, and being fully advised in this matter, **It Is Hereby Ordered** that Defendant's Motion to Dismiss is **DENIED** and the Motion to Strike First Amended Complaint is **GRANTED** for the following reasons.

Plaintiffs filed this lawsuit against the Defendant and Defendant's agent on March 30, 2007 in state court. On April 26, 2007, the Defendants removed the case to this court on the basis of federal question jurisdiction under 28 U.S.C. §331, 28 U.S.C. § 1337, 28 U.S.C. § 1441(a) and (b), 28 U.S.C. § 1445(b); 28 U.S.C. § 1446 and 49 U.S.C. § 14706. On April 30, 2007, Defendants filed a Motion to Dismiss on the grounds that all of Plaintiffs' claims arose under the Carmack Amendment, which completely preempts all state law claims and for the dismissal of Defendant's agent.

On June 14, 2007, the court ordered that Plaintiffs' claims clearly fell within

1 the preemptive scope of the Carmack Amendment and that the agent must be  
2 dismissed as well, but allowed Plaintiffs to amend their Complaint against  
3 Defendant Mayflower Transit Corp. and plead their claim under the Carmack  
4 Amendment.

5 On July 12, 2007, Plaintiff's filed an Amended Complaint alleging the same  
6 state law claims as originally filed but with the addition of the term "Carmack  
7 Agreement" in paragraph 13. Plaintiffs continue to allege gross negligence,  
8 reckless disregard, breach of contract, conversion, and a violation of the  
9 Washington State Consumer Protection Act, all claims which are preempted by the  
10 Carmack Amendment.

11 Under the Carmack Amendment, a shipper need only allege and prove that  
12 their goods were tendered to a carrier in good condition at origin, that the goods  
13 arrived in damaged condition or did not arrive at all at their destination, and the  
14 amount of damages suffered as a result.

15 The Plaintiffs are seeking damages in excess of what is allowed under the  
16 Carmack Amendment. They allege gross negligence, reckless disregard, breach of  
17 contract, conversion and a violation of the Washington Consumer Protection Act  
18 seeking treble damages and attorney fees, which are remedies provided by the  
19 Washington Consumer Protection Act. However under the Carmack  
20 Amendment, a shipper is only allowed to recover the actual loss or injury to the  
21 property caused by the carrier.

22 Therefore, Defendants seek to strike the allegations in Plaintiff's Amended  
23 Complaint, an Order preventing the Plaintiffs from filing another Amended  
24 Complaint, and an Order granting Defendant their attorney fees.

25 However, the court finds that the Plaintiffs are entitled to one more chance

1 to state a claim under the Carmack Amendment if they so desire.

2 Once again, Plaintiff's may within thirty (30) days from the date of this  
3 Order, if they so wish, file an Amended Complaint against Mayflower Transit  
4 Corp. only under the Carmack Amendment and only for the actual damages they  
5 suffered as the result of the loss of their goods, **not for the damages provided by**  
6 **the Washington Consumer Protection Act.** If Plaintiffs do not desire to so  
7 proceed, they shall voluntarily dismiss their action through a request to the court.

8 **IT IS SO ORDERED.** The Clerk is directed to enter this Order and  
9 forward copies to counsel.

10 **DATED** this 2<sup>nd</sup> day of August , 2007.

11 s/ Justin L. Quackenbush  
12 JUSTIN L. QUACKENBUSH  
13 SENIOR UNITED STATES DISTRICT JUDGE